AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Maryland

Larry Washington #407-448 *Plaintiff* v. Marion Tuthill, Warden, et al. *Defendant*	))))))	Civil Action No. GLR-13-03767

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Custodian of Records, Department of Public Safety and Correctional Services

(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See attachment

Place: DLA Piper LLP (US), Attn: Brett Ingerman 6225 Smith Avenue Baltimore, MD 21209	Date and Time: 07/22/2016 1:00 pm

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 6/21/16

CLERK OF COURT

____
Signature of Clerk or Deputy Clerk

OR

[signature]
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Larry Washington, who issues or requests this subpoena, are:

Brett Ingerman and David Dyson, 6225 Smith Avenue, Baltimore, Maryland 21209, brett.ingerman@dlapiper.com, david.dyson@dlapiper.com, 410-580-3000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

EXHIBIT 2

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. GLR-13-03767

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* DPSCS

on *(date)* ______________ .

☑ I served the subpoena by delivering a copy to the named person as follows: email & 1st Class Mail to Laura Mullally on *(date)* 6/22/16 ; or

❒ I returned the subpoena unexecuted because: ______________________________ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of

$ ______________ .

My fees are $ __________ for travel and $ __________ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 6/22/16 [signature]

Server's signature

____

Printed name and title

____

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
(i) is a party or a party's officer; or
(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:
(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***
(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***
(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
(i) fails to allow a reasonable time to comply;
(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
(iv) subjects a person to undue burden.
(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
(i) disclosing a trade secret or other confidential research, development, or commercial information; or
(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:
(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.
(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***
(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
(i) expressly make the claim; and
(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.
The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Larry Washington #407-448 Plaintiff, vs. Marion Tuthill, Warden, *et al.* Defendants.	Civil Action No. GLR-13-03767

ATTACHMENT TO SUBPOENA DIRECTED TO
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Pursuant to Fed. R. Civ. P. 45, Larry Washington, by his undersigned attorneys, requests that Department of Public Safety and Correctional Services respond to this subpoena within the time prescribed by the Federal Rules of Civil Procedure, and produce the following documents for inspection and copying on the 22nd day of July 2016, at 1 o'clock, p.m., and continuing from day to day thereafter, until completed, at the offices of Brett Ingerman, DLA Piper LLP (US), 6225 Smith Avenue, Baltimore, Maryland 21209, or at such time and place as may be agreed upon by all counsel.

INSTRUCTIONS

1. This Subpoena covers all documents in Your (as defined below) possession, custody, or control.

2. Documents attached to each other should not be separated. If responsive documents are kept together in the usual course of business, they should be so produced in order to fairly reveal and not to distort the order of the filing and record keeping system.

3. File folders with tabs or labels identifying documents responsive to the subpoena should be produced intact with such documents.

4. When two or more identical copies of a document bear different notations, underlining, or other markings, each such copy should be produced.

5. Where there are no documents in your custody, control, or possession that are responsive to a particular request, please so state.

6. If, in responding to this subpoena, you encounter any ambiguities when construing a request or definition, the response shall set forth the matter deemed ambiguous and the construction used in responding.

7. Whenever in this subpoena you are asked to identify or produce a document which is deemed by you to be properly withheld from production for inspection or copying:

a. If you are withholding the document under claim of privilege (including, but not limited to, the work product doctrine), please provide the information set forth in Fed. R. Civ. P. 26(b)(5) and Discovery Guideline 9(c)(ii)(b), including the type of document, the general subject matter of the document, the date of the document, and such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the document, and where not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other, in a manner that, without revealing the information claimed to be protected, will enable this party to assess the applicability of the privilege or protection claimed by you;

b. If you are withholding the document for any reason other than an objection that it is beyond the scope of discovery or that a request is unduly burdensome, identify as to each document and, in addition to the information requested in paragraph 2.A, above, please state the reason for withholding the document.

8. When a document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without thereby disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a document, the party claiming the privilege must clearly indicate the portions as to which the privilege is claimed. When a document has been redacted or altered in any fashion, identify as to each document the reason for the redaction or alteration, the date of the redaction or alteration, and the person performing the redaction or alteration. Any redaction must be clearly visible on the redacted document.

9. It is intended that this subpoena will not solicit any material protected either by the attorney/client privilege or by the work product doctrine which was created by, or developed by, counsel for the responding party after the date on which this litigation was commenced. If any request is susceptible of a construction which calls for the production of such material, that material need not be provided and no privilege log pursuant to Fed. R. Civ. P. 26(b)(5) or Discovery Guideline 9(a) will be required as to such material.

10. If production of any requested document(s) is objected to on the grounds that production is unduly burdensome, describe the burden or expense.

11. Electronic documents and computerized information shall be produced in accordance with the requirements provided in ***Appendix A***.

12. If any document or statement was, but is no longer, in your possession, subject to your control, or in existence, or if you are aware that a document or statement existed or is in the possession or control of another person, state the nature and subject matter of the document or statement, its author,

date and recipients, and for each such document or statement, state whether it is (a) missing or lost, (b) has been destroyed, (c) has been transferred, voluntarily or involuntarily to others, or (d) otherwise disposed of, and in each instance, explain the circumstances surrounding the disposition thereof, and state the date or approximate date your possession of or control over that document or statement ceased.

DEFINITIONS

Notwithstanding any definition set forth below, each word, term, or phrase used in this subpoena is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure. As used in this subpoena, the following terms are to be interpreted in accordance with these definitions:

1. The present tense includes the past and future tenses. The use of past tense includes the present and future tenses. The singular includes the plural, and the plural includes the singular. "All" means "any and all;" "any" means "any and all." "Including" means "including but not limited to." "And" and "or" encompass both "and" and "or." Words in the masculine, feminine or neuter form shall include each of the other genders.

2. The use of present tense includes past tense, and vice versa.

3. *Communication:* The term "communication" means the transmittal of information by any means.

4. *Complaint:* "Complaint" means the Fourth Amended Complaint in the above-captioned action filed in the U.S. District Court for the District of Maryland on filed on 3/31/16.

5. *Document:* The term "document" is defined to be synonymous in meaning and equal in scope to the usage of the term "documents or electronically stored information" in Fed. R. Civ. P. 34(a)(1)(A). The terms "writings," "recordings," and "photographs" are defined to be synonymous in

meaning and equal in scope to the usage of those terms in Fed. R. Evid. 1001. A draft or non-identical copy is a separate document within the meaning of the term "document."

6. *Parties:* The terms "plaintiff" and "defendant" (including, without limitation, third-party plaintiff, third-party defendant, counter claimant, cross-claimant, counter-defendant, and cross-defendant), as well as a party's full or abbreviated name or a pronoun referring to a party, mean that party and, where applicable, its officers, directors, and employees. The plaintiff is Larry Washington, DOC identification number 407-448. The defendants in this case are Marion Tuthill, Warden; Shavella Miles, Chief of Security; Karen Moore, Captain; Anika Beverly; Michael Porter; and Andrene Ffowlkes.

7. *Person*: The term "person" is defined as any natural person or any business, legal or governmental entity, or association.

8. *You/Your:* The terms "you" or "your" include the person(s) to whom this Subpoena is addressed, and all of that person's agents, representatives and attorneys.

9. When referring to a person, "to identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

10. When referring to documents, "to identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s). In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Fed. R. Civ. P. 33(d).

11. The term "concerning" means relating to, referring to, describing, evidencing or constituting.

12. "Relating" or "relates" means, in addition to its customary and usual meaning, discussing, referring to, pertaining to, reflecting, showing or recording.

DOCUMENTS REQUESTED

1. All documents relating to the two alleged attacks on Larry Washington, including but not limited to notices of infraction, adjustment hearing documents, section log books, Captain Moore's log, and "10-10" (officer needing assistance) communications, IIU records, and any documents to or from prosecutors.

2. All documents relating to Larry Washington from 2011 to today, including but not limited to his base file, commitment records, and enemies list.

3. All documents relating to Brandon Dovi, including but not limited to, his affiliation with the Black Guerilla Family, his dangerousness (including his weapon incidents on 2/7/2011 and 2/7/2012), his interactions with Larry Washington, his base file, commitment records, enemies list, and his disciplinary matters.

4. All documents relating to the housing assignments of Larry Washington and Brandon Dovi for 2011 - 2013, including but not limited to, inmate transfer documents, transfer records, and front gate reports.

5. All complaints and other documents written by Larry Washington during his incarceration at the Baltimore City Detention Facility.

6. Employment agreements, job descriptions, performance evaluations, disciplinary materials, resignations, terminations, complaints, awards, promotions, and demotions involving the Defendants.

7. All documents relating to training the Defendants received on housing prisoners, protecting prisoners, and gangs, including but not limited to, training materials, in-service materials, test results, certificates, and diplomas from their hiring through 2012.

8. Policies, procedures, standard operating procedures, general orders, and all other policy documents related to housing assignments, segregating prisoners, gangs, protecting prisoners, responding to complaints, and preventing violence in effect in 2012.

9. All documents from 2011 to 2012 relating to the Black Guerilla Family, including but not limited to, corruption at the Baltimore City Detention Facility, Brandon Dovi, attacks by the BGF, and intelligence reports.

10. All documents relating to corruption and mismanagement at the Baltimore City Detention Facility in 2011 and 2012.

11. All documents relating to Larry Washington's injuries from the alleged attacks in 2012 and subsequent medical care, both physical and psychological.

12. Medical records for Larry Washington from 2011 to today, including mental health records.

13. All electronic data and document retention policies the Defendants were subject to from January 2012 to today.

14. All documents concerning any release, settlement, or other agreement, formal or informal, pursuant to which the liability of any person or any entity for damage arising out of the 2012

attacks on Larry Washington which is the subject matter of this lawsuit has been limited, reduced, or released in any manner. This request includes all agreements by one party or person to indemnify or defend another party or person for claims asserted in this litigation.

15. All insurance policies under which a person carrying on an insurance business might be liable to pay to the Defendants or on the Defendants' behalves all or part of the damages sought in this action.

Dated: June 21, 2016
Baltimore, Maryland

Respectfully submitted,

DLA PIPER LLP (US)

By:_______________________

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Larry Washington

APPENDIX A

PROVIDE TO DLA Piper:

- Provide a Concordance dat with metadata fields.
- Provide an accompanying Opticon load file.
- Provide single page tiffs.
- Provide document level full text OCR files, named the same as the begbates.
- Provide native files for any produced image files, audio files, video files, database files, including, but not limited to, Microsoft Access files, spreadsheet files, including, but not limited to, Microsoft Excel files, and name native files the same as the begbates.

DAT file fields:

Beg Prod
End Prod
Beg Prod Attach
End Prod Attach
Image count
Doc Extension
To
From
CC
BCC
DATE SENT
TIME SENT
DATE RECEIVED
TIME RECEIVED
Date Created
Time Created
Date Last Modified
Time Last Modified
FILE SIZE
SUBJECT (Email)
Filename
MD5 Hash
EntryID
Extracted Text (Text Path)
FILE_PATH (Native File Path)
Author (Standalone electronic documents)
Custodian

Images Format:
Image files shall be single page Standard Group 4 Tiff.

Images shall be named by the bates number.
Images shall be grouped in folders of not more than 1500 images per folder.

Concordance Dat File Delimiters:
Text (comma): ASCII 020
Field (quote): ASCII 254
Record (newline): ASCII 174
Multi-value delimiter: ASCII 059 (semi-colon)
Field names as first line of data file.

Opticon Log File:
The format of the log file shall be standard Opticon format.
Example formal: ABC-123,DOCS1,D:\DOCS1\001\ ABC-123.tif,Y,,,4
Format is: Alias , CDVolume, Path and tiff name, document indicator, box indicator, folder indicator, page count
Preference is a single log file per CDVolume or a master log file per delivery.